IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 406 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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NATWARBHAI S/O. MATHURBHAI KESHAVBHAI PATEL TH' MAHENDRA
Versus
STATE OF GUJARAT

Appearance:
1. Special Criminal Application No. 406 of 2001
MR RJ GOSWAMI for Petitioner No. 1
MR KT DAVE APP for Respondents

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 24/08/2001

ORAL JUDGEMENT

1. In this petition filed under Article 226 of the Constitution, petitioner has challenged the order dated March 5, 2001, passed by the externing authority i.e., Sub Divisional Magistrate, Dholka Pranth, Dholka by which he has externed the petitioner for a period of two years

from five districts i.e., Ahmedabad Rural and Ahmedabad City, Kheda, Gandhinagar, Mehsana and Surendranagar and also the order dated May 1, 2001 passed by the appellate authority confirming the said order and prayed to issue a writ, order or direction quashing and setting aside both the above orders.

2. A show cause notice under section 59 of the Bombay Police Act ('the Act' for short) dated January 24, 2001 was issued to the petitioner wherein six allegations were made against him to the effect that he is a strong headed quarrelsome and aggressive person who has no fear of law and order, picking up quarrel with people and give threats to kill them, continues his anti social activities by which he is causing physical and financial damage to the people and the people are afraid of filing complaint against him and the activities carried out by him is detrimental for maintenance of public order. Besides this, five cases also were registered in Dholka police station against him. Therefore, by issuing a show cause notice the petitioner was called upon to show cause as to why he should not be externed for a period of two years from the districts to which reference is made in earlier paragraph of this judgment.

3. The petitioner gave reply to the said show cause notice. The externing authority after considering the reply and the material on the record passed the impugned order of externment dated 5.3.2001 in exercise of the powers conferred under section 56 (a) of the Act externing the petitioner for a period of two years from the above mentioned districts.

4. Aggrieved by the aforesaid order passed by the externing authority, the petitioner preferred an appeal before the appellate authority which was dismissed by the appellate authority vide order dated May 1, 2001 which has given rise to the present petition.

5. Mr. Goswami, learned advocate for the petitioner raised several contentions and tried to convince this Court that the order of externment suffers from various vices much less it is recorded in clear non- application of mind. Besides this, he has also raised a contention that the petitioner belongs to Ahmedabad Rural District and he is externed not only from Ahmedabad Rural District but from Ahmedabad City, Gandhinagar, Kheda, Mehsana and Surendranagar Districts. He also contended that the alleged so-called activities which are narrated in the show cause notice are confined to Ahmedabad Rural District only and the externing authority has not

mentioned anything about the activities of the petitioner in the contiguous four districts. Therefore, according to the learned advocate for the petitioner, the impugned order of externment suffers from the vices of non application of mind and is, therefore, liable to be quashed and set aside.

6. Mr. K.T. Dave, learned APP opposed the petition and contended that the petitioner is a strong headed person and his activities are detrimental to the society at large. He is involved in five criminal cases out of which four are of the year 2000. Therefore, the externing authority has rightly passed the order externing the petitioner for a period of two years. He, therefore, urged to dismiss the petition.

7. I have considered the submissions advanced by the learned advocates for the parties. I have also perused the averments made in the petition and and the order passed by the externing authority and the order passed by the appellate authority and other papers annexed to the petition.

8. It is true that the externing authority has power under Section 56 of the Act to remove or extern a person not only from the district within which the externing authority has jurisdiction, but also from the district contiguous to his own district. The criteria for passing such an order is provided for in Section 56 and there must be some indication in the order itself of the existence of circumstances which would lead to the satisfaction of the authority that it was necessary not only to extern a person from his own district but also from the contiguous district. Such circumstances must be qua every area or region from which a person is directed to be externed and there must be some material or indication of such material in the order.

9. Coming to the facts of the present case, there is no manner of doubt that the externing authority has not mentioned either in his show cause notice or in the impugned order of externment as to what necessitated him to pass the order of externment of the petitioner from the above mentioned four districts in additional to Ahmedabad Rural District. Therefore, it can be said that at the time of passing of the impugned order of externment the externing authority has not mentioned as to why the petitioner should be externed from other four districts in addition to Ahmedabad Rural District. On this sole ground the orders of the externing authority externing the petitioner and that of the appellate

authority confirming the order of externment are rendered invalid and illegal and deserve to be quashed and set aside.

10. For the foregoing reasons, the petition succeeds and accordingly it is allowed. The impugned orders at Annexures B and C to the petition are quashed and set aside. Rule is made absolute to the aforesaid extent. Direct service is permitted.

24.8.2001. (A.M. Kapadia, J.)

(karan)